IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF APRIL
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE P.SWAROOP REDDY

WRIT APPEAL No.273 OF 2007

Between:

Bharat Coca-Cola Bottling South East
Pvt Ltd. Now renamed as Hindustan
Coca Cola Beverages Private Limited.

..... APPELLANT

AND

The Presiding Officer, Labour Court-II,
Hyderabad and another.

....RESPONDENTS

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE P.SWAROOP REDDY

WRIT APPEAL No.273 OF 2007

O R D E R
(Per Sri Justice J.Chelameswar)

This appeal is filed by the unsuccessful petitioner in W.P.No.351 of 2007. The second petitioner herein raised an Industrial Dispute against the appellant herein, the details of which may not be necessary for the present purpose.

The appellant herein raised a preliminary issue to the effect that the second respondent herein is not a 'workman' within the meaning of the expression as defined under Section-2(s) of the Industrial Disputes Act, and therefore, there cannot be an industrial dispute within the ambit of the Act, which calls for adjudication by the Labour Court, Hyderabad, and insisted that the Labour Court should decide the issue before embarking upon an enquiry into the merits of the industrial dispute. By an order dated 4th December, 2006, the Labour Court declined to adjudicate upon the preliminary issue raised by the appellant herein principally relying upon a decision of the Supreme Court reported in D.P.MAHESWARI V/s. DELHI ADMINISTRATION[1]. Challenging the same, the petitioner filed W.P.No.351 of 2007. The learned Judge by the order under challenge dismissed the writ petition on 08.03.2007. Hence, the present appeal.

Learned counsel for the appellant Sri C.R.Sridharan vehemently argued that as many as eight Judgments of the Supreme Court are to the effect that when a preliminary issue is raised, the Labour Court would have to examine the preliminary issue without embarking upon the enquiry into the main issue and the solitary instance where the Supreme Court took a contrary view is in D.P.MAHESHWARI's case (1 supra), and therefore, the learned single Judge ought not to have dismissed the writ petition relying on D.P.MAHESHWARI's case (1 supra).

The learned counsel also brought to the notice of this Court that the very same Bench which decided the D.P.MAHESHWARI's case (1 supra), a little later in a decision reported in THE WORKMEN V/s. M/s.HINDUSTAN LEVER LTD[2] took a contrary view.

In fact, while deciding D.P.MAHESHWARI's case (1 supra) their Lordships observed as follows:

> **"… There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for**

> **adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. …"**

The very same Bench, however, took a different view in THE WORKMEN V/s. M/s.HINDUSTAN LEVER LTD's case (2 supra), the relevant portion of the judgment reads as follows:

> **"… Ordinarily, the Tribunal after ascertaining on what issue the parties are at variance raises issues to focus attention on points in dispute. In industrial adjudication, issues are of two types: (i) those referred by the Government for adjudication and set out in the order of reference and (ii) incidental issues which are sometimes the issues of law or issues of mixed law and fact. The Tribunal may as well frame preliminary issues if the point on which the parties are at variance, as reflected in the preliminary issue, would go to the root of the matter. But the Tribunal cannot travel beyond the pleadings and arrogate to itself the power to raise issues which the parties to the reference are precluded or prohibited from raising; to wit if the employer does not question t4he status of the workmen, the Tribunal cannot suo motu raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of the expression of the Act. …"**

The fact remains that D.P.MAHESHWARI's case (1 supra) is as much a precedent as the other decisions of the Supreme Court so long as it is not expressly or impliedly over-ruled by a larger Bench, and when confronted with a situation like the one on hand, it is only the judicial conscience of the Judge, which is the best guide to decide as to which decision is the right precedent, having regard to the totality of the circumstances obtaining in the case on hand. In our view, the learned single Judge considered all the relevant factors and came to

the conclusion that the case on hand is required to be decided in the light of the principles laid down by the Supreme Court in D.P.MAHESHWARI's case (1 supra) and we do not see any reason to interfere with the order of the learned single Judge. The writ appeal is accordingly dismissed at the admission stage itself.

JUSTICE J.CHELAMESWAR

P.SWAROOP REDDY

3RD APRIL, 2007

Note: Issue copy in one week.
(B/O) PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
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[1] (1983) 4 SCC 293

[2] (1984) 1 SCC 728